Submission

of the

Ontario Federation of Labour

to

HONOURABLE DALTON BALES, Q.C.

Minister of Labour

Province of Ontario

IN REGARDS TO

The Report of the Royal Commission Inquiry into Labour Disputes in the Province of Ontario

9

JAN. 1969

ONTARIO FEDERATION OF LABOUR

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Honourable Sir:—

For a number of years now we have followed the procedure of making a special presentation based on the resolutions to our annual convention on matters that come within the concern of the Department of Labour. We believe this has been mutually advantageous. We appreciate the interest and concern you have shown in such previous meetings. This year, because of the release of the Report of the Royal Commission Inquiry into Labour Disputes, we have departed from past procedure and will confine our presentation to that report and related matters.

This is not to say that we are not concerned with the Employment Standards Act, which just came into effect, workmen's compensation, safety and other matters that come within your area of interest. These matters, as well as some reiteration of the points made today, will be dealt with in our Submission to the Cabinet later on.

There are those who wish to persuade the public as well as the government that unions are somehow irresponsible, and inimical to the public good. This we challenge. These attacks are efforts to undermine the labour movement, and should be recognized as such.

Unions are an important and necessary element of our society. They are much more than mere economic devices to help working people in their relations with employers — although this is one of the fundamental reasons for their existence. Because they have been able to elevate the status of the worker to that of a self-respecting person, unions have added strength to the democratic structure, have expanded the area of freedom within our democracy and have made possible the avoidance of the violent

social conflicts of countries where workers have been deprived of the freedom of association which we have here.

We take pride in the contribution unions have made to the general well-being. Higher wages have provided not only an increased standard of living for union members but for others as well. Unions have contributed to the achievement of the shorter work week, the minimum wage, unemployment insurance, health and welfare plans, hospitalization, medicare and old age security. That this province has one of the highest standards of living is due in no small measure to the efforts of trade unions — together with the leadership of the government, the enterprise of the managers, the activities of the unions have been an essential ingredient in this.

By giving workers a collective voice at the bargaining table the labour movement has given the worker a degree of democracy in industrial relations. By the same token the workers have been given a voice in community affairs. The unions have played a useful and necessary part as the spokesmen for large numbers of otherwise voiceless and helpless people in the face of indifference and exploitation.

Unions have brought constitutional government into industry. The collective agreement is an industrial constitution and all workers benefit by the citizenship it confers. Without unions and collective bargaining, industry would be a dictatorship of the employer.

We believe your government agrees that the collective bargaining process is an important adjunct of the industrial system and a necessary component of a democratic society. Therefore, anything done in this area by the government should be to enhance this process, improve on what has been achieved and make industrial relations and collective bargaining workable, efficient and equitable.

We have criticisms of our labour laws and their administration. They still favour the employer, they are restrictive rather than permissive, they do not encourage bargaining in good faith, and they are discriminatory in their application.

Despite these shortcomings it has to be said that there is much on the credit side in our system of industrial relations. We have made progress. Labour-management relations have evolved considerably. While we continue to search for long term solutions to the problems of industrial strife we can see progress as we go along.

Perfection is not the goal of industrial relations. Fairness and justice are the goals. And in this we have secured some measure of success even with the inadequate system that we have. We will not find solutions to the problems of industrial relations by abandoning what we have built through

years of struggle. We have to improve on what we have. It was always with this in mind that we have criticized certain laws and procedures.

The ease with which it has been possible for employers to obtain interim injunctions, particularly ex parte injunctions, against picketing has been a source of great frustration to labour. It was the incidents around the activities directed against the abuse by the employer of the injunction weapon that prompted the government to appoint the Rand Commission in an effort to find a solution to this most vexing problem.

The report of the Rand Commission is very disappointing to the labour movement in this province and leaves us with a great deal of apprehension. We believe the report suffers from a basic premise that labour relations in this province are so chaotic that only a complete overhaul would straighten things out. The Commissioner's legalistic mind prompts a desire for a neat, completely conflict free utopian arrangement, disregarding the interests of labour and making the protection of so called public interest paramount. His efforts to balance the labour-management equations is divorced from reality and he ignores a basic truth that we live in a bargaining society.

Mr. Minister, most of our criticisms of the Rand report are easily understandable if you compare our brief to the commission with the Commissioner's report.

We proposed a greater degree of voluntarism, the Rand Commission would widen the area of government compulsory intervention. We were in favour of more permissiveness while the commission opted for the legal straight-jacket method. We took the position that injunctions had no place in labour disputes, yet this matter was relegated to a minor place in the report.

Mr. Rand, by his terms of reference, was enjoined to enquire into the problems, amongst them that of injunctions, after the conciliation procedure has been exhausted. This restricted him to dealing with effects or results rather than causes. However, he did not confine himself completely to these terms of reference and did venture into other areas. Thus, he came up with many impractical and unworkable proposals.

Our main criticism of Mr. Rand is his assumption that the free collective bargaining process has failed. We disagree. Despite its weaknesses our system has much to commend it. Where Mr. Rand errs most is that he ignores a century of law, precedent and experience entrenched in our present method of handling industrial relations. He proceeds with great vigour, and with what to him must seem originality, to demolish the whole edifice and rebuild from the ground up. Unfortunately, Lord Donovan's Report on Industrial Relations in Great Britain had not yet been published when the Rand Report was written. The Woods Committee had not yet been heard from. Lord Donovan opts most emphatically against

Professor R. Foenander in analyzing the tribunal system in Australia made the point very well.

> ". . . compulsory arbitration, or a system of industrial regulation of any other category, should not be regarded or relied upon as a final solution of the industrial problem of a country. . . There is every reason to observe with misgivings the adoption of "a policy or practise the purpose of which is to eradicate industrial conflict **in its entirety.**"[2]

It is interesting to speculate why, after spending so much time in Australia and drawing so extensively on the Australian situation for the recommendations in its report, the Rand Commission did not have a word to say about labour conditions in that country, not one statistic on the number of strikes they have had under the regime of the labour courts.

What is the situation in Australia? Last summer 32 Canadians, eight of whom were trade unionists, visited Australia to participate in the Duke of Edinburgh's Third Commonwealth Study Conference. A paper submitted by a representative group studying industrial relations indicated that the Australian experiment is hardly one that we should draw on for ideas on how to solve the problems of industrial relations.[3]

The group, in a written report, stated that as a result of the Industrial Court method and compulsory arbitration there has developed an impersonal relationship between the workers and management, absence of arrangements to air problems or grievances, apathy on the part of rank and file union members, a remoteness between the different groups involved, and a tendency to hand over the problems of the omniscient and distant "they". On return to Canada the trade union delegates reported that wildcat strikes and work stoppages are very numerous, as the Australian system fails to involve union members or plant management in decisions that affect them. Communications break down completely at the plant level, and in spite of heavy fines Australian workers are not deterred from striking.

The fact is that there are twice as many work stoppages in Australia as there are in Canada despite the restrictions against striking in that country and this is the system which Mr. Rand would have us adopt here.

According to the Year Book of Labour Statistics published by the ILO, there were 1,273 work stoppages in Australia in 1966 (this figure excludes the hundreds of work stoppages which number less than ten days duration).

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[2] Orwell de R. Foenander, "The Achievement and Significance of Industrial Relations" **International Labour Review**, Vol. LXXV, No. 2, Feb. 1957, p. 116-118.

[3] "Conference Report on Industrial Relations" Commission 5, The Duke of Edinburgh's Third Commonwealth Study Conference, Australia 1968.

Comparing the situation in Canada we find, from the same source, that there were 617 work stoppages in 1966 — half as many as in Australia. By what logic does Mr. Rand decide that the Australian system is better?

Kingsley Laffer, senior lecturer in Economics, University of Sydney, after giving credit for some of the achievements of the Australian system of compulsory arbitration conclude that,

> ". . . at present, however, this system appears to be operating without any clearly thought out purpose or sense of direction. In important sections of the industry arbitration seems to be retarding rather than assisting the development of good industrial relations. The growth of legalism is having adverse effects, both on the industrial relations and on the trade union movement, and important problems in the economic sphere remain to be solved."[4]

E. P. Kesall, an industrial psychologist, writes:

> ". . . it is hard to avoid the conclusion that the Australian arbitration system, using the approach and methods natural to legal institutions and engendered by legal training and traditions, is inappropriate to the problems."[5]

It seems to us that it would be to society's interest to maintain relative equality on both sides of the bargaining table. Justice and industrial peace is more likely to be achieved if this equation is equal. There is a myth that employers and employees are now equal with respect to the right of association. This myth is even perpetuated by the Ontario Labour Relations Act which solemnly declares "every person is free to join a trade union of his choice and participate in its lawful activities", and "every person is free to join an employer's organization of his own choice and to participate in its lawful activities" as though they were dealing with equal freedoms for equal persons. The fact that employees need statutory protection against unfair labour practises and which are spelled out in the Labour Relations Act belies the assertion that employees and employers are equal in respect to association.

Nor are they equal in parity of strength as Allan Flanders, a British industrial relations expert stated:

> ". . . in the absence of slavery or forced labour, the relationship between a worker and the firm where he finds employment is generally thought of as a contractual one. Certainly it has always been given some kind of contractual foundation in law. Apart from those imposed by statute, the legal rights and obligations between employers and employees have either been explicitly stated in the individual contract of employment or can be read into it as implied.

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[4] Kingsley Laffer, "Problems of Australian Compulsory Arbitration" **International Labour Review**, Vol. LXXVII, No. 5, May 1958, p. 433.

[5] E. P. Kesall, "Psychological Aspects of the Failure of Arbitration in Australia", **Australian Journal of Psychology**, Vol. 12, No. 1, p. 91.

> The doctrine of freedom of contract assumed that they met as equals in the labour market and voluntarily entered into a bargain on the terms which work would be exchanged for wages, because it was to their mutual advantage to do so. The law for its own purposes has accommodated many fictions, and this is one of them."[6]

Our economic system is such that the values of our society are biased in favour of the corporation — what the employer does to increase his profits is justified and what the employee does to improve and protect his economic interests is interpreted as an interference with free enterprise and even a danger to the economy. Certainly one gets this view if one scans the pages of the press.

Another section in the Ontario Labour Relations Act which perpetuates this myth of equal treatment of employer and employee is the section prohibiting the employer to interfere with the employees wishing to join a union or be active in one. The same section prohibits an employee from interfering with the right of the employer to exercise his right of association. Although there are a number of cases reported of employer interference with the employees' rights, we have yet to see a case reported of a union interfering with an employer's right to association.

Of equal absurdity is the reference to the prohibition against strikes and lock-outs during the life of a collective agreement. There again is this seemingly equal treatment. But the employer has many ways to combat the union. He has many ways to frustrate its efforts to change the status quo. He very rarely has to lock-out to achieve his ends. It is the union that is the initiator in changing the status quo and its actions are circumscribed until it can threaten strike or actually call one.

The seeming equality that the legislation implies is only window dressing, and the fact is that employees and employers are not equal and the existing legislation does not treat them as such.

When we ask for improvements in the present legislation we are merely asking that this seeming equality in the labour-management equation become so in fact.

Most of the proposals in the Rand Report, if implemented, would weigh the balance of power in favour of the employer. Rather than producing industrial peace they would expand the area of conflict in labour relations and set back industrial relations many years.

We sincerely suggest, Mr. Minister, that the remedies to our industrial ills lie in encouraging and assisting labour and management to develop more effective collective bargaining and disputes — settlement procedures through voluntary agreement. They lie in skilled and more

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[6] Allan Flanders, "The Internal Social Responsibilities of Industry", **British Journal of Industrial Relations**, Oxford University, March 1966.

readily available mediation services. And they lie in legislatively imposed obligation on the part of so-called essential industries to deal in good faith with the union of their employees.

The OFL brief to the Rand Commission deals in great detail with our position on many of the points raised here. The following in brief, is a reiteration of our position on these matters that are of greatest concern to the labour movement in Ontario:

INTENT OF THE ACT

The Labour Relations Act should be given a preamble stating in detail its purpose and intent.

There are laws, sanctified by usage, which, in reality, give management advantages over labour and infringe on the basic rights of labour in a free society. There are interpretations of laws which limit the rights of workers to free organization, collective bargaining, the right to withdraw their labour, and the right to picket in a lawful strike.

The first step in the direction of rectifying these injustices would be that a **statement of principles** be included as a preamble to the Ontario Labour Relations Act.

The cornerstone of the province's industrial relations policy has been expressed as the complete acceptance of free collective bargaining as the institutional process most able to resolve differences between employers and employees amicably, ensure democratic organization of employees within industry, and contribute to the greatest public good. This has been stated time and time again, by various Ministers of Labour and other government officials, ever since the Labour Relations Act was passed some twenty-five years ago.

We must assume, therefore, that implicit in the government's statement in respect to the complete acceptance of free collective bargaining is an expression of faith in and support of free trade unionism. If such a statement of faith in free trade unions is implied in the legislation it should not be left unsaid.

Thus, when a court is asked to examine a decision of the Labour Relations Board, it could do so knowing the clear unambiguous intent of the legislators. We would like to suggest that the preamble support the principle of trade unionism as a desirable method of workers sharing in our industrial democracy.

We do believe, that in legislation as important as the Labour Relations Act, the Board, as well as the court that may be asked to review the Board's decisions, are entitled to a clear statement of the legislature's intent when the Act was passed.

PICKETING

Picketing during a strike should be recognized as a means of **persuasion** in addition to disseminating information, and should not be restricted.

The section of the Criminal Code from which the laws in regard to picketing are interpreted by the courts is out of date and too narrow in its application. They were devised under ancient labour-management conditions and do not apply to modern industrial relations. Most of the courts have taken the position that picketing must be restricted to the dissemination of information and there is a mistaken idea among the judiciary that two or three pickets at an entrance to a plant is sufficient to communicate information that a strike is in effect.

We agree with Dean Carrothers that picketing means much more than that. He said ". . . a purposive element dominates the conveying of virtually any information by anyone. Pickets are advocates. Their object is to persuade. To say picketing 'is wrongful, if it is carried on other than for the purposes of obtaining or communicating information' (Canada Dairies Case) is close to saying it is wrongful if it is effective."[7]

Picket lines are a symbol of a union's solidarity and a vital method of obtaining the members' support, maintaining morale and in continuing their determination to stick it out until their grievances are adjusted. Numbers are therefore important. To limit or reduce the picket line to a token few by court order (and all that action in itself implies) is very often to take the heart out of the whole strike. The right to picket effectively should be a fundamental right in a democratic society.

SECONDARY BOYCOTT

The right to the peaceful picketing of the supplier or distributor of products of a struck plant should be permitted by legislation.

In today's economy and mass production methods it is often the rule that a manufacturer and also the distributor stockpile the product. In the event of a strike the effect of the work stoppage is not felt by the employer for some time. This presents an imbalance of power in the labour-management equation in the collective bargaining process that we enlarged on earlier in this brief. Therefore, the need for secondary boycott and peaceful picketing is of vital importance to a union on strike.

It might be worth noting the anomaly of our legislation which permits Metro Toronto to declare a boycott of California grapes in support of an attempt to organize agricultural workers in California, at the same time agricultural workers in Ontario are excluded from the Act.

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[7] Carrothers, A. W. R. **The Labour Injunction in British Columbia**, p. 67 CCH 1956.

There is a close interrelation between the manufacturer, supplier and distributor. When a strike occurs the strikers should be allowed to picket them all without restrictions.

PETITIONS AGAINST CERTIFICATION

Round robin petitions should be invalid unless they conform to the same requirements as applications for union certification are required to adhere to.

Where the opposing group objects to an application for certification, we suggest that it should be heard only after submitting the same evidence of support required of the applicant union. This should include the submission of a receipt signed by the person collecting the payment and countersigned by the employee concerned.

TECHNOLOGICAL CHANGE

The advent of relatively long term agreements and rapid technological change makes it imperative that machinery be established to give real meaning to bargaining on such changes during the life of a collective agreement.

As a result of the Industrial Inquiry Commission on CNR "Run-Throughs" and the subsequent report of the Honourable Mr. Justice S. Freedman, attention has been focused on the proposition that industry has a responsibility to the community as a whole and to the workers involved, in particular, if a major change in the enterprise is contemplated during the life of a collective agreement. The Freedman report proposed that when a technological change is contemplated that would displace workers then the disposition of the work force and possibly the gradual changeover should be negotiated with the representatives of the workers. Federal Labour Minister Bryce Mackasey has stated repeatedly that he supports Freedman on this. In the introductory statement of his department's estimates for 1968-69 he stated in the House:

> "Why is it always the individual Canadian worker who must bear exclusively the terrible personal and disruptive effects that quite naturally stem from technological change? The time has come for the Minister of Labour to convince his colleagues that legislation defining and emphasizing management's responsibility to its employees in the area of technological change is overdue. The philosophy of Judge Freedman and others is clear and precise. . . I am committed to such legislation."

However, neither the federal government nor the government of this province has taken any steps to implement the Freedman report. About a year and a half ago your Research Department made a study of technological change provisions in ten manufacturing industries and it is evident from this study that the contract provisions on this important

item are generally quite weak and limited in their application. We suggest that unless the government recognizes the need to assist in this area through legislation then the contract provisions will continue to be weak or non-existent, and industry will continue to make unilateral decisions affecting its work force and the community by invoking the protection of the so called management's residual rights theory.

ESSENTIAL SERVICES AND THE PUBLIC INTEREST

If free collective bargaining is to be effective **all** workers should have the right to take economic action when necessary.

There has been a great deal of debate surrounding the question of what is, or is not, an "essential service". Too many people have interpreted "essential service" to mean personal inconvenience rather than matters of public health and safety. Most, if not all strikes, inconvenience someone, but those which involve health and safety are rare.

We have always taken the position that workers in the public sector of our economy should be treated with at least as much respect and accorded the same rights as other workers in our society. Unfortunately, that is not always the case if you take a close look at the wages and working conditions of these workers.

Mr. Rand proposes action against striking when there is "**developing or imminent** degree of danger to the health, safety, **convenience** or vital interest of the public". The phrase "developing or imminent" in this case can be interpreted by an over zealous member of the judiciary to mean that there is danger when it is only in the mind of the employer. Adding this formulation to that of "convenience" makes the proposal that much more repugnant.

Public inconvenience when related to strikes can be open to an interpretation affecting all strikes. If the proposal were to be implemented it would make a mockery of the right to strike and would be the end of free and effective collective bargaining in this province.

We believe that the direction in labour relations that this province should be taking should be towards more and better forms of mediation rather than compulsion, and this is particularly true in the essential industries. We must make improvements in the voluntary means by which labour and management arrive at joint conclusions.

If there is to be government intervention then it should be in this area. There should be more assistance in providing data for negotiations. The training and making available of more mediators is essential. The idea of bringing competent mediators into negotiations at earlier stages of bargaining for a new collective agreement as initiated by the federal

department of labour in the recent successful railway negotiations should be explored fully by this province.* It certainly appears to have some merit and offers an alternative method to past practise.

INCORPORATION

We are completely opposed to any suggestion that unions be incorporated and subject to liability for damages in the courts.

The privilege enjoyed by trade unions as unincorporated bodies has a long history. The Trade Disputes Act of Great Britain was enacted in 1906 as a result of the developments which arose out of the Taff Vale Railway strike. This Act, among other things, provided that unions could not be sued for damages arising out of a work stoppage. This basic principle has remained to this day. We would also remind you that incorporation of unions in the early days in the United States was tried and it was found that it did not work.

Even with all of the strikes and threatened strikes recently in Ontario, there is nothing that has happened that could possibly justify even suggesting that a principle so long established and which has worked so well over the years be interfered with in any way.

To now suggest that unions be made corporate bodies and liable to be sued for damages would do nothing to serve the community as a whole. In fact, the opposite would be the case. All it would do would be to put a powerful tool in the hands of the employer. Given this tool, employers could destroy all but the most powerful of unions, and even they would not long be able to find the finances to carry on this kind of warfare.

We are disturbed that in recent years legislative action, arbitration boards and court decisions have been responsible for the whittling away of these rights, and we believe that this trend should now be stopped.

EXCLUSIONS

All employees including those of the government and its agencies should have the right to choose the union of their choice and to have the same rights in collective bargaining that industrial workers have.

Our Federation has taken the position that all employees of Crown Agencies should have the right to be represented for collective bargaining purposes by the union of their choice. In this regard we have, over the period of many years, made representation on this point in our annual legislative submissions.

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* Incidentally, the mediator appointed by the Federal Minister of Labour in the recent railway negotiations was Mr. W. P. Kelly, a former Vice-President of the Brotherhood of Railroad Trainmen. He had the support of both management and labour and was largely responsible for the early settlement of the dispute. This is further evidence of how wrong Mr. Rand was when he proposed that only judges and lawyers should head administrative bodies in labour relations.

case in certiorari proceedings in which Labour Board decisions have been challenged. We recognize the court is jealous of its jurisdiction, and that some tribunals, particularly in the licensing field, have left themselves open to criticism. But we would rather accept a few unsatisfactory decisions from the Board, as long as they are delivered with due dispatch, than pursue a course in which the courts will eventually review most decisions as a part of union busting, delaying tactics of some management.

We therefore respectfully request that no changes be made in the Labour Act that would in any way weaken the privitive clause or disrupt the method of representation between management and labour that is now contemplated in the Act.

DELAYS

> If there is one root cause of much of the trouble in labour-management relations it is the matter of delays; delays in processing certification, delays in conciliation, delays in the arbitration procedures all add to the frustration which culminates in strike situations.

One of the major complaints we have about the Rand Report is that if such drastic measures as the Commission proposed were to be entertained, then considerable study must be given to the whole procedure rather than to just what happens after conciliation. It is far more important to determine what are the real causes of disputes and not what happens after they take place. Only in this way can we develop the means to head them off. Our experience indicates that delays are the main cause of frustration and tensions and unless we streamline all of the procedures and eliminate as far as possible those roadblocks in our present procedures, then appointing an all-powerful tribunal to dictate what happens after a strike takes place seems rather a futile gesture.

We believe the establishment of the Ontario Labour-Management Arbitration Commission is a step in the right direction and should be of real assistance. However, we would suggest that a thorough study of all delays be undertaken and whatever changes such studies would indicate be made. This is the sort of thing that would improve the present situation and make implementation of the principle expounded by the Rand Report completely unnecessary.

CONCLUSION

We have endeavoured to put before you as concisely as possible our observations of the Rand Report and would caution those who are clamoring for change that to remove labour-management relations from "the law of the jungle" and replace it with a "jungle of law" would accomplish

absolutely nothing except transfer the location of the confrontation from the bargaining table to the lawyers' offices, with beneficial results to the legal profession but doubtful gains to the labour-management process.

All of which is respectfully submitted.

ONTARIO FEDERATION OF LABOUR

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President

DOUGLAS F. HAMILTON
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